

This is an appeal from a preliminary hearing. K.S.A. 44-534a, as amended, grants jurisdiction to the Appeals Board to review the following issues on appeals from preliminary hearings: (1) whether the employee suffered an accidental injury; (2) whether the injury arose out of and in the course of employment; (3) whether notice and claim were timely made; and (4) whether certain defenses apply. The issue raised by respondent does not

fall within one of those four listed categories. Therefore, K.S.A. 44-534a, as amended, does not empower the Appeals Board with jurisdiction to hear this appeal at this stage of the proceedings.

K.S.A. 44-551(b), as amended, confers jurisdiction upon the Appeals Board to review an appeal from a preliminary hearing order entered pursuant to K.S.A. 44-534a, as amended, where it is alleged the administrative law judge exceeded his or her jurisdiction in making such order. An administrative law judge has the authority at preliminary hearing to determine whether a claimant is temporarily, totally or partially disabled. Therefore, K.S.A. 44-551(b), as amended, does not grant the Appeals Board jurisdiction at this juncture of the proceeding to review and reweigh the evidence concerning claimant's entitlement to temporary total disability benefits.

The respondent may preserve the issue for a final award as provided by K.S.A. 44-534a(a)(2), as amended. The statute provides in pertinent part:

"Except as provided in this section, no such preliminary findings or preliminary awards shall be appealable by any party to the proceedings, and the same shall not be binding in a full hearing on the claim, but shall be subject to a full presentation of the facts."

WHEREFORE, it is the finding, decision, and order of the Appeals Board that it does not have jurisdiction to review at this juncture of the proceedings the Order for Compensation entered by Administrative Law Judge Floyd V. Palmer, dated April 24, 1997, and that this review should be, and is hereby, dismissed.

IT IS SO ORDERED.

Dated this ____ day of July 1997.

BOARD MEMBER

c: Michael G. Patton, Emporia, KS
Kip A. Kubin, Overland Park, KS
Floyd V. Palmer, Administrative Law Judge
Philip S. Harness, Director